

No. 11542

United States
Circuit Court of Appeals
For the Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,
vs.

OREGON CITY WOOLEN MILLS, a corporation
and C. L. KELLY, manager of the Portland,
Oregon store,
Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Oregon

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THE HISTORY OF THE

REVOLUTION

OF THE

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IN

1776

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

HENRY L. HESS,
United States Attorney,

VICTOR E. HARR,
Assistant United States Attorney,
506 U. S. Courthouse,
Portland, Oregon,
For Appellant.

A. B. WINFREE,
Spalding Building,
Portland, Oregon,
For Appellees.

In the United States District Court
for the District of Oregon

No. C-16868

UNITED STATES OF AMERICA,
Plaintiff,

vs.

OREGON CITY WOOLEN MILLS, a corporation,
and C. L. KELLY, manager of the Portland,
Oregon, store,

Defendants.

INFORMATION

Violation of Emergency Price Control Act of 1942,
as Amended, 421 77th Cong. 2nd Sess. 56 Stat.
23 50 U.S.C.A., and Maximum Price Regulation
580, as amended, Section 18(d), 10 FR 3015 and
3642

Be It Remembered That J. Robert Patterson, As-
sistant to the Attorney of the United States for the
District of Oregon, who prosecutes in behalf and
with the authority of the United States, comes here
in person into court at this March term thereof, and
for the United States gives the court to understand
and be informed that:

Count I.

That heretofore and on or about the 17th day of
June 1946, in the City of Portland, County of Mult-
nomah, State of Oregon, and within the jurisdiction
of the United States District Court for the said

District of Oregon, the defendants then and there being did then and there knowingly, wilfully and unlawfully, and with the intent and design to violate the Emergency Price Control Act of 1942, as amended, and Maximum Price Regulation 580, as amended, 10 Fed. Reg. 3015 and 3642, promulgated thereunder, did then and there violate Section 18(d) of Maximum Price Regulation 580, that is to say:

That at said time and place, said defendants sold and delivered to one Margaret Fleming a pair of men's slacks and at said time and place compelled the said Margaret Fleming to purchase a man's jacket as a consideration for the sale and delivery to the said Margaret Fleming of said men's slacks, contrary to the form of the statutes in such case made and provided and against the peace and dignity of the United States of America. [1*]

Count II.

That heretofore and on or about the 19th day of June, 1946, in the City of Portland, County of Multnomah, State of Oregon, and within the jurisdiction of the United States District Court for the said District of Oregon, the defendants then and there being did then and there knowingly, wilfully and unlawfully, and with the intent and design to violate the Emergency Price Control Act of 1942, as amended, and Maximum Price Regulation 580, as amended, 10 Fed. Reg. 3015 and 3642, promulgated thereunder, did then and there violate Section 18(d) of Maximum Price Regulation 580, that is to say:

* Page numbering appearing at foot of page of original certified Transcript of Record.

That at said time and place, said defendants sold and delivered to one R. C. Thorington a pair of men's slacks and at said time and place compelled the said R. C. Thorington to purchase a man's jacket as a consideration for the sale and delivery to the said R. C. Thorington of said men's slacks, contrary to the form of the statutes in such case made and provided and against the peace and dignity of the United States of America.

Whereupon, the United States Attorney for the District aforesaid, prays the consideration of this court here in the premises, and that due process of law may be awarded against the said Oregon City Woolen Mills, a corporation, and C. L. Kelly, Manager of Portland, Oregon, store, defendants in this behalf, to make their answer to the United States touching and concerning the premises.

Dated at Portland, Oregon, this 28th day of June A. D., 1946.

/s/ HENRY L. HESS,

United States Attorney for the
District of Oregon,

By /s/ J. ROBERT PATTERSON,

Deputy United States Attorney.

United States of America,
District of Oregon—ss.

I, J. Robert Patterson, Assistant to the United States Attorney for the District of Oregon, being

sworn, do say that the foregoing information is true,
as I verily believe.

/s/ J. ROBERT PATTERSON.

[Endorsed]: Filed June 28, 1946. [3]

[Title of District Court and Cause.]

MOTION FOR DISMISSAL

Comes now A. B. Winfree, Attorney for the above named defendants, and moves the Court for an Order dismissing the above and foregoing information for the reason that said information does not state facts sufficient to constitute an offense against the laws of the United States.

Dated this 8th day of January, 1947.

/s/ A. B. WINFREE,
Attorney for Defendants.

[Endorsed]: Filed Jan. 9, 1947. [4]

[Title of District Court and Cause.]

ORDER OF DISMISSAL

This cause coming on upon the motion of attorney for defendants for an order of dismissal, and the Court being advised with reference to the law and the facts in the premises, and finding that said motion is well taken, it is therefore hereby

Considered, Ordered, and Adjudged that said information be and the same is hereby dismissed.

Dated this 9th day of January, 1947.

/s/ CLAUDE McCOLLOCH.

[Endorsed]: Filed Jan. 9, 1947. [5]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Please take notice that the United States of America appeals to the Circuit Court of Appeals for the Ninth Circuit from that certain Order and Judgment made, rendered and entered in the above-entitled cause on the 9th day of January, 1947, by the Honorable Claude McColloch, Judge of the above-entitled Court, wherein the Court dismissed an information for the reason and upon the ground that the information failed to state facts sufficient to constitute a crime under the laws of the United States. The information filed and returned on the 28th day of June 1946 alleged an offense based upon two counts in violation of Maximum Price Regulations No. 580 as amended (10 Fed. Register 3015 and 3642) issued pursuant to the provisions of the Emergency Price Control Act of 1942 as amended and extended (Pub. L. 421, 77th Cong., 2d Sess., 56 Stat., C. 26, 50 U.S.C.A. Appx. 212, Pub. L. 383, 78th Cong., 2d Sess. 57 Stat., 566 Pub. L. 108, 79th Cong., 1st Sess., C. 214), in that the defendant sold a certain article of clothing and as a condition of

the sale compelled the purchasers as a condition for the sale of the first article to buy and purchase a second article, that is, a "tie in" sale.

Dated at Portland, Oregon this 8th day of February, 1947.

HENRY L. HESS,
United States Attorney for the
District of Oregon,
J. ROBERT PATTERSON,
Assistant United States Attorney.

[Endorsed]: Filed Feb. 8, 1947. [6]

[Title of District Court and Cause.]

MOTION

Comes now Henry L. Hess, United States Attorney and Victor E. Harr, Assistant United States Attorney, and based upon attached affidavit moves the Court for an order extending the time for the filing of the designation of record and docketing the action of appeal granting to Appellant 90 days from the first date of Notice of Appeal. This motion is made pursuant to Rule 39(c), Rules of Criminal Procedure.

Dated at Portland, Oregon this 18th day of March, 1947.

HENRY L. HESS,
United States Attorney for the
District of Oregon,
/s/ VICTOR E. HARR,
Assistant United States Attorney.

United States of America,
District of Oregon—ss.

Due and legal service of the within Motion is hereby accepted within the State and District of Oregon, on the 18th day of March, 1947 by receiving a copy thereof duly certified to as true and correct copy of the original by Victor E. Harr, Assistant United States Attorney for the District of Oregon.

/s/ A. B. WINFREE, J.A.
Attorney for Defendant.

State of Oregon,
County of Multnomah—ss.

I, Victor E. Harr, being first duly sworn, depose and say that I am Assistant United States Attorney for the District of Oregon, that the case of the United States vs. Oregon City Woolen Mills, Criminal Number 16868 was being handled by Assistant United States Attorney, J. Robert Patterson, who is presently away from the office for a period of time; that said cause has been reassigned to me during the absence of J. Robert Patterson; that a Notice of Appeal was duly filed in this cause on February 8, 1947; that I myself have been away from the office for a period of ten days because of a death in my family and since my return on March 8, 1947 I have been unable to give the within cause the necessary attention, or any attention at all in the preparation and docketing of the record herein; that it is my intention to submit certain matters with relation to this case to the Attorney General for considera-

tion before filing the designation of record. This Affidavit is made in support of a motion for an extension of time within which to file the designation of record.

Dated at Portland, Oregon this 18th day of March, 1947.

/s/ VICTOR E. HARR,

Assistant United States Attorney.

Subscribed and sworn to before me this 18th day of March, 1947.

[Seal]

LINUS M. FULLER,

Notary Public for Oregon.

My commission expires Jan 26, 1951.

[Endorsed]: Filed March 19, 1947. [8]

[Title of District Court and Cause.]

ORDER

This matter coming on to be heard this date upon motion of Plaintiff-Appellant through its attorney, Henry L. Hess, United States Attorney for the District of Oregon and Victor E. Harr, Assistant United States Attorney for an order extending time for filing record and docketing the appeal, and the filing of designation of record, and it appearing to the Court, the examination of affidavit of Victor E. Harr on file herein, that good cause has been shown therefore and the Court being fully advised in the premises;

It Is Ordered that the time for filing of the record and docketing of appeal and the filing of designation of record be and it is hereby extended to 90 days from the date of the first Notice of Appeal.

Made and entered at Portland, Oregon this 19th day of March, 1947.

CLAUDE McCOLLOCH,
Judge.

[Endorsed]: Filed March 19, 1947. [9]

[Title of District Court and Cause.]

DESIGNATION OF RECORD

The United States, by its attorney, Henry L. Hess, United States Attorney for the District of Oregon, designates for inclusion in the transcript of Record to be certified by the Clerk of the United States District Court for the District of Oregon and to be filed in the Circuit Court of Appeals for the Ninth Circuit, pursuant to appeal in the above-entitled cause, the following documents:

1. Information.
2. Motion to Dismiss.
3. Transcript of Proceedings before the Honorable Claude McColloch on January 7, 1947, including argument, statement and rulings by the court.
4. Order dismissing Information entered.
5. Notice of Appeal.
6. Order of March 19, 1947 allowing an addi-

tional ninety days within which to docket and file record on appeal.

7. This Designation of Record.

/s/ HENRY L. HESS,

United States Attorney for the
District of Oregon. [10]

United States of America,
District of Oregon—ss.

I, Victor E. Harr, Assistant United States Attorney for the District of Oregon, hereby certify that I have made service of the foregoing Designation of Record on the Appellee herein, by depositing in the United States Post Office at Portland, Oregon on the 22nd day of April, 1947, a duly certified copy thereof, enclosed in an envelope with postage thereon prepaid, addressed to A. B. Winfree, Attorney at Law, Spalding Building, Portland, Oregon, Attorney for Appellee.

/s/ VICTOR E. HARR,

Assistant United States Attorney.

[Endorsed]: Filed April 22, 1947. [11]

United States of America,
District of Oregon—ss.

CERTIFICATE OF CLERK

I, Lowell Mundorff, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered

[Title of District Court and Cause.]

(And Other Cases)

Portland Oregon, January 7, 1947

Before: Honorable Claude McColloch, Judge.

Appearances:

Mr. J. Robert Patterson, Assistant United States Attorney, appearing for the Government;

Mr. Alfred T. Sulmonetti, appearing for the Defendant Clarke T. Wheelbarger;

Mr. Francis F. Yunker, appearing for the Defendant Irva Rambeau;

Mr. W. J. Prendergast, Jr., appearing for the Defendant S. J. Lewin;

Mr. Wyatt Williams, appearing for the Defendant Robert Evans;

Mr. Reese Wingard, appearing for the Defendant Vadrian O. Hayes;

Mr. Thomas H. Tongue, appearing for the Defendant Sidney D. Wagner;

Mr. Harry G. Hoy, representing H. V. Johnson, Attorney for Defendant Royce Cornell, alias Roy Cornwell;

Mr. A. B. Winfree, appearing for the Defendant Oregon City Woolen Mills.

PROCEEDINGS

The Court: There are eight OPA criminal cases for arraignment this morning. Will the lawyers and the defendants all come to the front of the courtroom.

In this case of the Government against Hayes, who is for the defendant?

Mr. Wingard: I represent the defendant.

The Court: United States against Wagner, who is for the defendant?

Mr. Tongue: I am, your Honor. I have a motion to dismiss that case, your Honor.

The Court: Yes. Wheelbarger?

Mr. Sulmonetti: I represent the defendant, your Honor.

The Court: Evans?

Mr. Williams: Wyatt Williams, your Honor.

The Court: Lewin?

Mr. Prendergast: I represent the defendant.

The Court: Are the defendants all here? Is there any attorney here who does not have his client with him? (No [2*] response.)

Mr. Hoy: I am here on behalf of H. V. Johnson who represents the defendant Cornwell.

The Court: Yes.

Mr. Hoy: Mr. H. V. Johnson of Eugene.

The Court: Yes.

Mr. Hoy: We have a motion to dismiss.

The Court: Yes. Oregon City Woolen Mills?

Mr. Winfree: I represent the defendant.

The Court: Is the company represented by a corporate officer?

Mr. Winfree: I am an officer of the corporation as well as its attorney. We do not want to plead individually at the present time.

* Page numbering appearing at top of page of original Reporter's Transcript.

The Court: I remember when you used to be a prosecutor, but I never expected to see you here as a defendant.

Mr. Winfree: Will your Honor take a plea individually at this time?

The Court: In just a few minutes. Rambeau?

Mr. Yunker: I represent that defendant, your Honor.

The Court: These are all OPA cases, are they not? They are either on indictment or information for violations of the Price Control Act, or for violations of OPA regulations. That is correct? If it is not, you tell me.

I told our Grand Jury yesterday that in my opinion [3] no valid indictment or information could be returned under OPA regulations after the date of the expiration of the law, which was June 30, 1946. I do not mean for cases occurring after July 25th but I mean that unless there was an indictment or information pending, having been returned and filed with the Court on or before June 30, 1946, that in my opinion no valid indictment could be returned or filed. All of these were returned after that date, were they not?

Mr. Sulmonetti: The Wheelbarger case was returned prior—no. That date is June 30th, your Honor?

The Court: Do you have a copy of it with you?

Mr. Sulmonetti: No, your Honor. I did not bring it with me. I think Mr. Patterson has that.

The Court: This was returned September 16, 1946. I do not think there were any exceptions.

That being so, to be consistent with the directions which I gave the Grand Jury yesterday not to return any more indictments, because of the view that I entertained, in all of these present proceedings where motions to dismiss have been filed the motions are allowed, the indictments are dismissed, the defendants discharged from custody and bail exonerated.

In cases where motions have not been filed, such motions will be entertained. They should be filed in writing. It will not be necessary for either counsel or the [4] defendants to come here. Meanwhile, bail in those cases will be continued.

Mr. Williams: I also have an order for exonerating the bond.

The Court: Yes.

REPORTER'S CERTIFICATE

I, Ira G. Holcomb, Court Reporter, hereby certify that on, to-wit, January 7, 1947, I reported in shorthand certain proceedings had in the above entitled cause and court; that I thereafter caused my said shorthand notes to be reduced to typewriting, and that the foregoing transcript, consisting of pages numbered 1 to 5, inclusive, constitutes a true, full and accurate transcript of said shorthand notes, so taken by me as aforesaid.

Dated at Portland, Oregon, this 13th day of March, A. D. 1947.

/s/ IRA G. HOLCOMB,
Court Reporter. [5]

[Endorsed]: No. 11542. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Oregon City Woolen Mills, a corporation and C. L. Kelly, manager of the Portland, Oregon, store, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed May 3, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 11542

UNITED STATES OF AMERICA,
Appellant,
vs.

OREGON CITY WOOLEN MILLS, a corporation,
and C. L. KELLY, Manager of the Portland,
Oregon, store,
Appellee.

DESIGNATION OF RECORD

Appellant respectfully designates for printing the whole and entire record as particularly itemized in Appellant's Designation of Record to the District

Court to be forwarded to the United States Circuit Court of Appeals, Ninth Circuit, it being the Appellant's intention to designate the whole and entire record on appeal, namely:

1. Information.
2. Motion to Dismiss.
3. Transcript of Proceedings before the Honorable Claude McCulloch on January 7, 1947, including argument, statement and rulings by the Court.
4. Order dismissing Information entered.
5. Notice of Appeal.
6. Order of March 19, 1947 allowing an additional ninety days within which to docket and file record on appeal.
7. This Designation of Record.

Dated at Portland, Oregon this 25th day of April, 1947.

/s/ HENRY L. HESS,

United States Attorney for the
District of Oregon.

[Affidavit of service by mail attached.]

[Endorsed]: Filed April 28, 1947.